

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAWNDALE ELEMENTARY SCHOOL  
DISTRICT.

OAH Case No. 2016060544

ORDER GRANTING REQUEST FOR  
RECONSIDERATION AND  
GRANTING NOTICE OF  
INSUFFICIENCY

On June 21, 2016, the undersigned administrative law judge issued an order regarding the sufficiency of Student's complaint determining that Lawndale's notice of insufficiency was untimely filed. On June 22, 2016, Lawndale filed a motion for reconsideration asserting that the notice of insufficiency was timely filed because it was served the first business day following the 15 day deadline to file an NOI. Student did not file a response to the request for reconsideration.

APPLICABLE LAW

*Reconsideration*

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

*Notice of Insufficiency*

The named parties to a due process hearing request have the right to challenge the complaint's sufficiency. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the

complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.” (Sen. Rep. No. 108-185, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. of Educ. v. Benton* (S.D. Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

## DISCUSSION

### *Reconsideration*

Lawndale’s motion contains new facts in support of the requested reconsideration. Namely, Lawndale asserts that it complied with the 15 day requirement to file a notice of insufficiency because the 15th day fell on a Saturday and that it filed its complaint the next business day, Monday, June 20, 2016. Lawndale cited OAH policy that states in relevant part, “When a filing deadline falls on a weekend or holiday, the deadline is automatically extended to the next business day.” This is sufficient to grant Lawndale’s request for reconsideration.

### *Notice of Insufficiency*

Student’s complaint raises three issues. The first issue alleged a denial of FAPE based upon Lawndale’s failure to provide “adequate services and accommodations...” This

issue does not identify a time period within which the alleged violation occurred. Additionally, it does not identify the type of services and accommodations that were needed. This issue as pled does not provide Lawndale sufficient information to know how to prepare for the hearing.

Student's second issue is an incomplete sentence that alleges Lawndale "had a duty to reassess Student upon hearing of her poor" with no additional words. No additional facts are contained in the complaint leading one to infer the omitted word(s). Accordingly, this issue does not provide Lawndale sufficient information to know how to prepare for the hearing.

Student third issue asserts that Lawndale wrongfully excluded Student's mother from campus. There are no dates included in the complaint specifying when Mother was excluded from campus or that this exclusion resulted in Student being denied a FAPE. Accordingly, this issue fails to provide sufficient information for Lawndale to prepare for the hearing.

On reconsideration, Lawndale's NOI is granted.

#### ORDER

1. Motion for Reconsideration is granted.
2. Student's complaint is insufficiently pled under section title 20 United States Code 1415(c)(2)(D).
3. Student shall be permitted to file an amended complaint under title 20 United States Code section 1415(c)(2)(E)(i)(II).<sup>1</sup>
4. The amended complaint shall comply with the requirements of title 20 U.S.C. section 1415(b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.
5. If Student fails to file a timely amended complaint, the complaint will be dismissed.

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<sup>1</sup> The filing of an amended complaint will restart the applicable timelines for a due process hearing.

6. All dates previously set in this matter are vacated.

IT IS SO ORDERED.

DATE: June 23, 2016

DocuSigned by:  
*Joy Redmon*  
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JOY REDMON  
Administrative Law Judge  
Office of Administrative Hearings